

Drug and Alcohol Testing Mississippi Statute

- 71-7-1. Definitions.
- 71-7-3. Furnishing by employers of written policy statements on drug and alcohol use prior to implementation of testing; dissemination; standard language; notification of job applicants; signing of statements regarding testing policies by applicants or employees; testing of government employees, applicants, and elected officials.
- 71-7-5. Conduct of testing generally; authorized types of tests.
- 71-7-7. Neutral selection drug and alcohol testing; routine testing; testing of employees participating in rehabilitation.
- 71-7-9. Collection, storage and transportation of specimens; training and certification of persons to conduct testing; time of testing; rights of employees upon receipt of positive results; discharge, discipline, etc., of employees generally; payment of costs of testing.
- 71-7-11. Conduct of confirmation tests.
- 71-7-13. Designation of employee or applicant as handicapped due to test result; discharge, discipline, etc., of employee on basis of test result or refusal to submit; construction and application of chapter generally.
- 71-7-15. Confidentiality of information related to drug and alcohol testing; discharge or discipline of employee for refusal to consent to authorized release of information.
- 71-7-17. Standards for laboratories conducting confirmation tests.
- 71-7-19. Disclosure and contents of laboratory test result reports.
- 71-7-21. Promulgation of rules by State Board of Health.
- 71-7-23. Civil actions for damages and injunctive relief for violations of chapter authorized; award of attorney fees.
- 71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.
- 71-7-27. Procedure for and effect of election to conduct testing policy or program;

procedure for rescission of election; effect of failure to make election or rescission of election.

- 71-7-29. Application of chapter to employers subject to federal testing laws.
- 71-7-31. Private employer establishing testing program not deemed agent or instrument of the state.
- 71-7-33. Requirement of abstention from use of tobacco products during nonworking hours as condition of employment prohibited.

SEC. 71-7-1. Definitions.

As used in this chapter, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:

- (a) "Confirmation test" means a drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and alcohol test.
- (b) "Drug" means an illegal drug, or a prescription or nonprescription medication.
- (c) "Alcohol" means ethyl alcohol.
- (d) "Drug and alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's body fluids.
- (e) "Employee" means any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state.
- (f) "Employee assistance program" means a program provided by an employer offering assessment, short-term counseling and referral services to employees, including drug, alcohol and mental health programs.
- (g) "Employer" means any individual, organization or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint- stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, which has one or more employees within this state, or which has offered or may offer employment to one or more individuals in this state.

- (h) "Illegal drug" means any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate inhalation.
- (i) "Initial test" means an initial drug test to determine the presence or absence of drugs or their metabolites in specimens.
- (j) "Neutral selection basis" means a mechanism for selecting employees for drug tests that: (i) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and (ii) does not give an employer discretion to waive the selection of any employee selected under the mechanism.
- (k) "Prescription or nonprescription medication" means a drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments or injuries.
- (l) "Reasonable suspicion drug and alcohol testing" means drug and alcohol testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:
 - (i) Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;
 - (ii) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness or deterioration in work performance;
 - (iii) A report of drug use provided by reliable and credible sources and which has been independently corroborated;
 - (iv) Evidence that an individual has tampered with a drug and alcohol test during his employment with the current employer;
 - (v) Information that an employee has caused or contributed to an accident while at work;
 - (vi) Evidence that an employee is involved in the use, possession, sale,

solicitation or transfer of drugs while working or while on the employer's premises or operating the employer's vehicle, machinery or equipment.

- (m) "Specimen" means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

SOURCES: Laws, 1991, ch. 610, Sec. 1; reenacted and codified, 1994, ch. 323, Sec. 1, eff from and after passage (approved March 14, 1994)

SEC. 71-7-3. Furnishing by employers of written policy statements on drug and alcohol use prior to implementation of testing; dissemination; standard language; notification of job applicants; signing of statements regarding testing policies by applicants or employees; testing of government employees, applicants, and elected officials.

- (1) Any employee who may be required by an employer to submit to a drug and alcohol test shall be provided, at least thirty (30) days prior to the implementation of a drug and alcohol testing program, a written policy statement from the employer which contains:
 - (a) A general statement of the employer's policy on employee drug use which shall include identifying both the grounds on which an employee may be required to submit to a drug and alcohol test and the actions the employer may take against an employee on the basis of a positive confirmed drug and alcohol test result, or other violation of the employer's drug use policy;
 - (b) A statement advising the employee of the existence of this chapter;
 - (c) A general statement concerning confidentiality;
 - (d) Procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested;
 - (e) Circumstances under which drug and alcohol testing may occur, and a description of which positions will be subject to testing on a reasonable suspicion, neutral selection or other basis;
 - (f) The consequences of refusing to submit to a drug and alcohol test;
 - (g) Information on opportunities for assessment and rehabilitation if an employee has a positive confirmed test result and the employer determines that discipline or discharge are not necessary or appropriate;
 - (h) A statement that an employee who receives a positive confirmed drug and

alcohol test result may contest the accuracy of that result or explain it;

- (i) A list of all drugs for which the employer might test. Each drug shall be described by its brand name, common name, or its chemical name;
 - (j) A statement regarding any applicable collective bargaining agreement or contract.
- (2) An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy shall be made available for inspection during regular business hours by employees in the employer's personnel office or other suitable locations.
- (3) The State Board of Health shall develop standard language for those sections of drug and alcohol testing notices described in paragraphs (b), (c) and (d) of subsection (1) of this section.
- (4) An employer who conducts job applicant drug and alcohol testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites.
- (5) An employee or job applicant required to submit to a drug and alcohol test may be requested by an employer to sign a statement indicating that he has read and understands the employer's drug and alcohol testing policy and/or notice. An employee's or job applicant's refusal to sign such a statement shall not invalidate the results of any drug and alcohol test, or bar the employer from administering the drug and alcohol test or from taking action consistent with the terms of an applicable collective bargaining agreement or the employer's drug and alcohol testing policy, or from refusing to hire the job applicant.
- (6) If the employer is a government employer, the decision of whether to require employees and/or applicants for employment to submit to drug and alcohol tests in accordance with the provisions of this chapter shall be made by the executive head or governing body of the department, agency, institution or political subdivision authorized to employ. However, in the case of any elected public official of the State of Mississippi or of any department, agency, institution or political subdivision thereof, the decision of whether any person who such official is authorized to employ, or any person who any governing board, commission or body upon which or as a member of which such public official has been elected by the people to serve is authorized to employ, shall be required to submit to a drug and alcohol test in accordance with the provisions of this chapter shall be made:
 - (a) By the governing board, commission or body upon which or as a member

of which such public official has been elected to serve; or

- (b) If the elected public official has not been elected to serve upon or as a member of a governing board, commission or body, by the elected official himself.

SOURCES: Laws, 1991, ch. 610, Sec. 2; reenacted and codified, 1994, ch. 323, Sec. 2, eff from and after passage (approved March 14, 1994)

SEC. 71-7-5. Conduct of testing generally; authorized types of tests.

- (1) Except as otherwise provided in Section 71-7-27, all drug and alcohol testing conducted by employers shall be in conformity with the standards established in this section, other applicable provisions of this chapter, and all applicable regulations promulgated pursuant to this chapter.
- (2) An employer is authorized to conduct the following types of drug and alcohol tests:
 - (a) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.
 - (b) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.
 - (c) An employer may require all employees to submit to neutral selection drug and alcohol testing pursuant to Section 71-7-9.

SOURCES: Laws, 1991, ch. 610, Sec. 3; reenacted and codified, 1994, ch. 323, Sec. 3, eff from and after passage (approved March 14, 1994)

SEC. 71-7-7. Neutral selection drug and alcohol testing; routine testing; testing of employees participating in rehabilitation.

- (1) Subject to the provisions of this chapter and any applicable collective bargaining agreement or contract, any nongovernment employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing.
- (2) Subject to the provisions of this chapter, any government employer may require

as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing; provided, however, that the employees tested and the criteria for such testing shall be determined by the government employer, based upon the extent to which the government employer:

- (a) Is engaged in law enforcement;
 - (b) Has national or state security responsibilities;
 - (c) Has drug interdiction responsibilities; or
 - (d) Has positions which:
 - (i) Authorize employees to carry firearms;
 - (ii) Give employees access to sensitive information;
 - (iii) Authorize employees to engage in law enforcement;
 - (iv) Require employees, as a condition of employment, to obtain a security clearance; or
 - (v) Require employees to engage in activities affecting public health or safety.
- (3) An employer may require an employee to submit to a drug and alcohol test if the test is conducted as part of a routinely scheduled employee fitness for duty medical examination that is part of the employer's established policy and/or which is scheduled routinely for all members of an employment classification or group.
- (4) An employer may require an employee to submit to neutral selection or routine drug and alcohol tests if the employee in the course of his employment enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug and alcohol testing of the employee within a twelve-month period resulted in a positive confirmed test result, or the drug and alcohol test is conducted in accordance with the terms of an applicable collective bargaining agreement or contract that permits the employer to administer drug and alcohol tests on a neutral selection or routine basis.
- (5) If an employee is participating in drug abuse rehabilitation, drug and alcohol testing may be conducted by the rehabilitation provider as deemed appropriate by the provider.

SOURCES: Laws, 1991, ch. 610, Sec. 4; reenacted and codified, 1994, ch. 323, Sec. 4, eff from and after passage (approved March 14, 1994)

SEC. 71-7-9. Collection, storage and transportation of specimens; training and certification of persons to conduct testing; time of testing; rights of employees upon receipt of positive results; discharge, discipline, etc., of employees generally; payment of costs of testing.

- (1) The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable.
- (2) Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens.
- (3) Specimen collection shall be documented, and the documentation procedures shall include:
 - (a) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and
 - (b) An opportunity for the employee or applicant to provide any information that he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug and alcohol test, but shall be taken into account in interpreting any positive confirmed results.
- (4) Specimen collection, storage and transportation to the testing site will be performed in a manner which will reasonably preclude specimen contamination or adulteration, and specimen testing for drugs shall conform to scientifically accepted analytical methods and procedures.
- (5) Each confirmation test conducted under this chapter, not including the taking or collecting of a specimen to be tested, shall be conducted by a certified laboratory.
- (6) A specimen for a drug and alcohol test may be taken or collected by any of the following persons:
 - (a) A physician, a registered nurse or a licensed practical nurse;
 - (b) A qualified person employed by a certified laboratory; or
 - (c) Any person deemed qualified by the State Board of Health.

- (7) The State Board of Health shall establish a program to train and certify persons to collect specimens and conduct on-site drug and alcohol tests in the workplace. Employers may designate employees for this training and certification, or may utilize any person so trained and certified.
- (8) A person who collects or takes a specimen for a drug and alcohol test conducted pursuant to this chapter shall collect an amount sufficient for two (2) drug and alcohol tests as defined by the State Board of Health.
- (9) Any drug and alcohol testing conducted or requested by an employer shall occur during or immediately after the regular work period of current employees, and shall be deemed to be performed during work time for purposes of determining compensation and benefits for current employees.
- (10) Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the certified laboratory that conducts the confirmation test for a period of ninety (90) days from the time the results of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's expense, at a certified laboratory chosen by the employee. The certified laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.
- (11) Within five (5) working days after receipt of a positive confirmed test result report from the testing laboratory, an employer shall, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available to him.
- (12) An employee may request and receive from the employer a copy of the test result report.
- (13) Within ten (10) working days after receiving notice of a positive confirmed test result, the employee may submit information to an employer explaining the test results, and why the results do not constitute a violation of the employer's policy. If an employee's explanation of the positive test results is not satisfactory to the employer, a written explanation submitted by the employer as to why the employee's explanation is unsatisfactory, along with the report of positive results, shall be made a part of the employee's medical and personnel records.
- (14) Except as otherwise provided in Section 71-7-13 (10), an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test.

- (15) An employer may not discharge, discipline, discriminate against or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to this chapter unless the employee had an affirmative obligation to provide such information before, upon or after hire.
- (16) An employer who performs on-site drug and alcohol tests or specimen collection shall establish chain-of-custody procedures to ensure proper record keeping, handling, labeling and identification of all specimens to be tested.
- (17) The employer shall pay the costs of all drug and alcohol tests to which he requires, or requests, an employee or job applicant to submit. The employee or job applicant shall pay the costs of any additional drug and alcohol tests requested by the employee or job applicant.

SOURCES: Laws, 1991, ch. 610, Sec. 5; reenacted and codified, 1994, ch. 323, Sec. 5, eff from and after passage (approved March 14, 1994)

SEC. 71-7-11. Conduct of confirmation tests.

Only certified laboratories shall conduct confirmation drug and alcohol tests. All confirmation tests shall use an alternate method of equal or greater sensitivity than that used on the initial drug and alcohol test. If an initial drug and alcohol test is negative, there shall be no confirmation drug and alcohol test.

SOURCES: Laws, 1991, ch. 610, Sec. 6; reenacted and codified, 1994, ch. 323, Sec. 6, eff from and after passage (approved March 14, 1994)

SEC. 71-7-13. Designation of employee or applicant as handicapped due to test result; discharge, discipline, etc., of employee on basis of test result or refusal to submit; construction and application of chapter generally.

- (1) An employee or job applicant whose drug and alcohol test result is confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of the result alone, be defined as a person with a "handicap."
- (2) An employer who discharges or disciplines an employee on the basis of a positive confirmed drug and alcohol test in accordance with this chapter shall be considered to have discharged or disciplined the employee for cause.
- (3) An employee discharged on the basis of a confirmed positive drug and alcohol test in accordance with this chapter shall be considered to have been discharged for willful misconduct.
- (4) A physician-patient relationship is not created between an employee or job applicant, and an employer or any person performing or evaluating the drug and

alcohol test, solely by the establishment or implementation of a drug and alcohol testing program.

- (5) This chapter does not prevent an employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.
- (6) This chapter shall not be retroactive and shall not abrogate any right an employer may have to conduct drug and alcohol tests prior to the effective implementation date of this chapter. A drug and alcohol test conducted by an employer before the effective date of this chapter shall not be subject to this chapter.
- (7) If an employee refuses to submit to drug and alcohol testing administered in accordance with this chapter, the employer shall not be barred from discharging, or disciplining, or referring the employee to a drug abuse assessment, treatment and rehabilitation program at a site certified by the Department of Mental Health.
- (8) An employer, in addition to any appropriate personnel actions, may refer any employee found to have violated the employer's policy on drug use to an employee assistance program for assessment, counseling and referral for treatment or rehabilitation as appropriate. Such treatment or rehabilitation shall be at a site certified by the Department of Mental Health.
- (9) This chapter does not prohibit an employer from conducting medical screening or other tests required by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screenings or tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests.
- (10) An employer may temporarily suspend or transfer an employee to another position after obtaining the results of a positive on-site initial test. An employer may discharge an employee after obtaining the results of a positive confirmed test.
- (11) Nothing in this chapter shall affect any right of an employer to terminate the employment of any person for reasons not related to a drug and alcohol testing program implemented pursuant to the provisions of this chapter.

SOURCES: Laws, 1991, ch. 610, Sec. 7; reenacted and codified, 1994, ch. 323, Sec. 7, eff from and after passage (approved March 14, 1994)

SEC. 71-7-15. Confidentiality of information related to drug and alcohol testing; discharge or discipline of employee for refusal to consent to authorized release of information.

- (1) All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this chapter.
- (2) Any information obtained by an employer pursuant to this chapter shall be the property of the employer.
- (3) An employer shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by the employer on a need to know basis, information related to drug and alcohol test results unless:
 - (a) The employee or job applicant has expressly, in writing, granted permission for the employer to release such information;
 - (b) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or
 - (c) There is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.
- (4) The confidentiality provisions provided for in this section shall not apply to other parts of an employee's or job applicant's personnel or medical files.
- (5) If an employee refuses to sign a written consent form for release of information to persons as permitted in this chapter, the employer shall not be barred from discharging or disciplining the employee.

SOURCES: Laws, 1991, ch. 610, Sec. 8; reenacted and codified, 1994, ch. 323, Sec. 8,

eff from and after passage (approved March 14, 1994)

SEC. 71-7-17. Standards for laboratories conducting confirmation tests.

No laboratory may conduct confirmation drug and alcohol tests unless:

- (a) The director of the laboratory and the laboratory are certified by the State Board of Health, or are licensed or certified by an agency of another state to conduct such tests.
- (b) The laboratory has written testing procedures and written procedures to ensure a chain of custody.
- (c) The laboratory demonstrates satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry, or the equivalent.
- (d) The laboratory follows proper quality control procedures, including but not limited to:
 - (i) The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy;
 - (ii) An internal review and certification process for test results conducted by a person qualified to perform that function in the testing laboratory;
 - (iii) Security measures implemented by the testing laboratory to preclude adulteration of specimens and test results; and
 - (iv) Other necessary and proper actions are taken to ensure reliable and accurate test results.

SOURCES: Laws, 1991, ch. 610, Sec. 9; reenacted and codified, 1994, ch. 323, Sec. 9, eff from and after passage (approved March 14, 1994)

SEC. 1-7-19. Disclosure and contents of laboratory test result reports.

- (1) A laboratory shall disclose to the employer a written test result report within five (5) working days after the test.
- (2) All laboratory reports of a test result shall, at a minimum, state:
 - (a) The name and address of the laboratory that performed the test and the

positive identification of the person tested;

- (b) Any positive confirmed drug and alcohol test results on a specimen which tested positive on an initial test, or a negative drug and alcohol test result on a specimen; provided, however, that reports should not make reference to initial or confirmatory tests when reporting positive or negative results;
- (c) A list of the drugs tested for;
- (d) The type of tests conducted for both initial and confirmation tests and the cut-off levels of the tests; and
- (e) The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific drug and its metabolites that an employer requests to be identified.

SOURCES: Laws, 1991, ch. 610, Sec. 10; reenacted and codified, 1994, ch. 323, Sec. 10, eff from and after passage (approved March 14, 1994)

SEC. 71-7-21. Promulgation of rules by State Board of Health.

The State Board of Health shall adopt rules concerning:

- (a) Standards for drug and alcohol testing laboratory certification, suspension and revocation of certification;
- (b) Body specimens that are appropriate for drug and alcohol testing;
- (c) Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmatory tests;
- (d) Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result;
- (e) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested; and
- (f) Retention and storage procedures to ensure reliable results on confirmation tests and retests.

SOURCES: Laws, 1991, ch. 610, Sec. 11; reenacted and codified, 1994, ch. 323, Sec. 11, eff from and after passage (approved March 14, 1994)

SEC. 71-7-23. Civil actions for damages and injunctive relief for violations of chapter authorized; award of attorney fees.

- (1) A person alleging a violation of this chapter may bring an action for injunction relief or damages, or both.
- (2) For the purposes of this chapter, damages shall be limited to the recovery of compensatory damages directly resulting from injury or loss caused by each violation of this chapter.
- (3) A person or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided, however, that the person's right to bring an action under this section shall not be affected by a decision of a collective bargaining agent not to pursue a grievance.
- (4) If a violation of this chapter is found and damages are awarded, reasonable attorney fees may be awarded to the person if the court or arbitrator finds that an employer has knowingly or recklessly violated this chapter.

SOURCES: Laws, 1991, ch. 610, Sec. 12; reenacted and codified, 1994, ch. 323, Sec. 12, eff from and after passage (approved March 14, 1994)

SEC. 71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.

- (1) Upon an alleged violation of the provisions of this chapter, a person must institute a civil action in a court of competent jurisdiction within one (1) year of the alleged violation or the exhaustion of any internal administrative remedies available to the person, or be barred from obtaining the relief provided for in subsection (2) of this section.
- (2) Relief for violations of this chapter shall be limited to:
 - (a) An injunction to restrain the continued violation of this chapter;
 - (b) The reinstatement of the person to the same position held before the unlawful drug and alcohol testing, disciplinary action or discharge, or to an equivalent position;
 - (c) The reinstatement of full employee benefits and seniority rights;
 - (d) Compensation for lost wages, benefits and other remuneration to which the person would have been entitled but for a violation of this chapter;
 - (e) Payment by the employer of reasonable costs.

- (3) Any employer who complies with the provisions of this chapter shall be without liability from all civil actions arising from any drug and alcohol testing programs or procedures performed in compliance with this chapter.
- (4) Pursuant to any claim alleging a violation of this chapter, including a claim under this chapter in which it is alleged that an employer's action with respect to a person was based on an incorrect test result, there shall be a rebuttable presumption that the test result was valid if the employer complied with the provisions of this chapter.
- (5) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, unless:
 - (a) Information regarded as confidential is released not in accordance with an information release form signed by the person or otherwise not in accordance with this chapter;
 - (b) The information disclosed was based on an incorrect test result;
 - (c) The incorrect test result was disclosed with malice; and
 - (d) All other elements of an action for defamation of character, libel, slander or damage to reputation as established by statute or common law, are satisfied.
- (6) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug and alcohol testing.

SOURCES: Laws, 1991, ch. 610, Sec. 13; reenacted and codified, 1994, ch. 323, Sec. 13, eff from and after passage (approved March 14, 1994)

SEC. 71-7-27. Procedure for and effect of election to conduct testing policy or program; procedure for rescission of election; effect of failure to make election or rescission of election.

- (1) A private employer may affirmatively elect to conduct an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter. Such election shall be made by including in the written statement of the employer's policy on drug use provided for in Section 71-7-3 (1), and in the job applicant notification provided for in Section 71-7-3 (4), a specific statement that the employer's policy is being implemented pursuant to the provisions of this chapter. In the event a private employer makes such an election, the private employer and its employees and job applicants shall have the rights and

obligations available to a private employer and its employees and job applicants under this chapter. A private employer who has made such an election may rescind such election by posting a written and dated notice in an appropriate and conspicuous location on the employer's premises, which notice shall state that the employer's employee drug and alcohol testing policy or program will no longer be conducted pursuant to this chapter. As to employees, the rescission of such election shall become effective no earlier than ten (10) working days after the date of the posted notice. As to job applicants, an employer may rescind such election without notice to such job applicant.

- (2) Any private employer who does not make such an election or who rescinds an election previously made will be deemed to not be conducting an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter, and in that event the rights and obligations of the employer and its employees and job applicants will not in any way be subject to or affected by the provisions of this chapter, but will instead be governed by applicable principles of contract or common law.

SOURCES: Laws, 1991, ch. 610, Sec. 14; reenacted and codified, 1994, ch. 323, Sec. 14, eff from and after passage (approved March 14, 1994)

SEC. 71-7-29. Application of chapter to employers subject to federal testing laws.

This chapter shall not apply to any employer who is subject to federal law or federal regulations governing the administering of drug and alcohol tests to any of its employees or applicants for employment.

SOURCES: Laws, 1991, ch. 610, Sec. 15; reenacted and codified, 1994, ch. 323, Sec. 15, eff from and after passage (approved March 14, 1994)

SEC. 71-7-31. Private employer establishing testing program not deemed agent or instrument of the state.

A private employer shall not, by virtue of establishing or implementing a program for drug and alcohol testing in accordance with this chapter or otherwise, be deemed to be an agent or instrument of the State of Mississippi or any body, department, agency, institution or political subdivision thereof.

SOURCES: Laws, 1991, ch. 610, Sec. 16; reenacted and codified, 1994, ch. 323, Sec. 16, eff from and after passage (approved March 14, 1994)

SEC. 71-7-33. Requirement of abstention from use of tobacco products during nonworking hours as condition of employment prohibited.

It shall be unlawful for any public or private employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

SOURCES: Laws, 1991, ch. 610, Sec. 17; reenacted and codified, 1994, ch. 323, Sec. 17, eff from and after passage (approved March 14, 1994)